

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5643 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

SALIM BHADRUDIN PANCHWANI

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.Prajapati for Mr.R.S.Sanjanwalla for petitioner.
Mr.Neegal Shukla, APP for Respondent Nos. 1 to 3.
Mr.S.C.Patel for Respondent No.4.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGEMENT

This Special Civil Application which is filed by the nephew of the detenu, is directed against an order dated 12.7.1996 passed by the District Magistrate, Valsad whereby the detenu has been detained under the provisions of prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. The

detention order was executed on 12.7.1996 and since then the detenu is under detention lodged at Special Jail, Bhuj.

This Special Civil Application was filed on 31.7.1996 and Rule returnable on 30.8.1996 was issued on 1.8.1996. The District Magistrate, Valsad has filed the affidavit-in-reply dated 24.9.1996, the Under Secretary to the Government of Gujarat, Food and Civil Supplies Department has filed the affidavit-in-reply on 30.8.1996 and Mr. Sunil Patel, learned Advocate has filed counter affidavit dated 19.8.1996 on behalf of the Union of India. The grounds of detention with the detention order show from the mention made in para 6 that the Detaining Authority has taken into consideration the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 wherein the wheat was included in Schedule I in part 1 under the heading "Foodstuffs", under the sub-heading "A Foodgrains including products thereof" the entry "(1) wheat".

The detention order has been challenged on number of grounds but at the time of arguments the learned counsel has kept the challenge confined only on the ground that the detention order suffers from the non application of mind by the Detaining Authority inasmuch as it has not taken into consideration, "The Gujarat Essential Articles (Licensing, Control and Stock)(Declaration) (Amendment) Order, 1986 - some words deleted from Schedule I of the Principal Order, 1981" vide the order 'No.GTH-86-29-ECA-1086-GOI-120-B dated 26.10.1986 published in Government Gazette, Extraordinary Part IV-A dated 27.10.1986 Pg.131, whereby entry "(1) wheat" was deleted. Mr. Neegam Shukla, learned Addl.P.P. has submitted that it is a fact that the entry 'wheat' was deleted from the principal order of 1981 vide amendment of 1986 as pointed out by the learned counsel for the petitioner. Thus, it is clear that the entry 'wheat' was deleted from the principal order of 1981 vide amendment order of 1986 as referred to above and published in the Government Gazette dated 27.10.1986. The reference and reliance of 1981 order in the detention order is therefore on the face of it erroneous, although the fact remains that wheat is an essential commodity under the wheat control order of 1977.

The learned counsel for the petitioner has submitted that the inclusion of wheat in the wheat control order of 1977 is not disputed but deletion of wheat from 1981 order as per amendment order of 1986 is admitted by the respondents. He has placed reliance on Division

Bench judgment of this Court whereby three Special Criminal Applications No. 1332 of 1992, 1145 of 1992 and 1110 of 1992 were decided by the common order dated 4.9.1992 placing reliance on earlier Division Bench judgment in Special Civil Application No. 99 of 1989. The Division Bench has taken note of such a fact situation as also the wheat control order of 1977 and has quashed the detention order. I have considered the submissions and find that the aforesaid Division Bench order dated 4.9.1992 covers the case of the petitioner in the facts of this case which have not been controverted rather admitted on the crucial point by Mr. Neegam Shukla, learned Addl. P.P. at the time of arguments. The reference to 1981 order taking wheat to be an essential commodity despite amendment order in 1986 shows total non application of mind by the Detaining Authority and the detention order deserves to be quashed and set aside on this ground alone. It may be added that on the same ground Special Civil Application No. 7910 of 1996 has already been allowed by this Court on 1.11.1996 wherein the detention order dated 21.8.1996 passed by the District Magistrate, Ahmedabad has been quashed and set aside.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 12.7.1996 passed by the District Magistrate, Valsad is hereby quashed and set aside. The detention of the detenu is declared to be illegal. The respondents are directed to release the detenu and set him at liberty forthwith if not required in any other case. Rule is made absolute.
